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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,457	08/03/2001	Robert H. Schultz	CBC 2001-10	7028

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EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/921,457	Applicant(s) SCHULTZ ET AL.	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1746	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20040303 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: 7, 10 and 24.

Claim(s) rejected: 1-6, 8, 9, 19-23 and 25.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


FRANKIE L. STINSON
PRIMARY EXAMINER
GROUP 3400-1700

Continuation of 10. Other: Applicant's arguments are not persuasive for at least the following reasons:

Regarding the claims objection, applicant argues that amending the preamble from a "washer" to a "system" and subsequently claiming the "object to be washed" in the body that the object to be washed is a structural limitation. This is not persuasive. A "system" is an "apparatus." In re Walter, 618 F.2d 758, 762 n.2, 205 USPQ 397, 402 n.2 (CCPA 1980). Moreover, applicant alleges that the object to be washed is part of the apparatus. This is not persuasive because applicant's claims are directed to the apparatus and not the object to be washed, which is an article of manufacture. These are separate statutory classes. The claimed object to be washed is given little weight since the object to be washed is not an integral part of the apparatus, that is, the apparatus stands alone without the object to be washed. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original) It appears applicant may be attempting to claim the apparatus by what it does, not by what it is, and thus, applicant is encouraged to file a divisional application for a method of using for such subject matter.

Regarding the claims rejection over Hulskotte, applicant appears to argue that the Examiner considers applicant's recitations regarding the object to be washed as "not limiting", further relying on the objects to be washed in Hulskotte in arguing the differences in Hulskotte and applicant's claimed apparatus. This is not persuasive because applicant has failed to provide any evidence of structural differences between Hulskotte and applicant's claimed apparatus, merely relying on the intended use differences between the two (see also preceding paragraph). Thus, applicant has failed to show how Hulskotte and applicant's claimed invention differ structurally.

Moreover, applicant states "[I]n emphasizing above the term 'structural', the Board of Appeals stresses that the cases in question only apply when the structural limitations of the claim in question are met by the prior art." The Examiner agrees and believes this statement supports the Hulskotte rejection. The object to be washed is not a positive structural recitation. Assuming arguendo, if the object to be washed was considered positively recited structure and given significant weight, the apparatus would cease to exist upon removal of the object after washing. Accordingly, it is unclear how such a limitation may be construed as a positive, structural limitation when such a limitation is clearly not part of the apparatus (i.e. intended use).

Regarding the claims rejection over Hulskotte and Flynn, applicant has failed to provide any arguments contending the Examiner's rejection. Thus, the rejection is maintained for reasons of record. .